

**ENTERED**

January 27, 2016

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

VICTORIA DIVISION

STEVE BATTLES, #1783447	§	
	§	
V.	§	CIVIL ACTION NO. V-15-041
	§	
WILLIAM STEPHENS,	§	
Director, Texas Department of Criminal	§	
Justice, Correctional Institutions Division	§	

REPORT AND RECOMMENDATION

Petitioner Steve Battles has filed a motion to amend his pending habeas petition. By his proposed amendment Battles wants to assert a claim that his attorney at the time he rejected the state's misdemeanor plea bargain was constitutionally ineffective for failing to persuade him that accepting the offer would be in his best interest since he would have received a shorter period of incarceration than he faced and ultimately received following his felony convictions. Non-exhaustion aside, that claim would be futile and subject to dismissal. Jebaco v. Harrah's Operating Co., Inc., 587 F.3d 314, 322 (5<sup>th</sup> Cir. 2009). Battles, not his attorney, chose to reject the offer and it was not a constitutional violation for the prosecutor to have "openly presented (Battles) with the unpleasant alternatives of foregoing trial or facing charges on which he was plainly subject to prosecution." Bordenkircher v. Hayes, 434 U.S. 357, 365 (1978). While confronting Battles with the risk of more severe punishment may have had a discouraging effect on the assertion of his right to trial it is a permissible attribute of a judicial system that tolerates and encourages

the negotiation of pleas. Id., at 364. Since Battles cannot prove any underlying constitutional violation the court would lack jurisdiction to consider his claim.

It is therefore the recommendation of this court that Battles's motion for amendment (26) be denied.

The clerk shall send a copy of this report and recommendation to the parties who shall have until February 29, 2016, to file any written objections.

**DONE** at Galveston, Texas, this 27th day of January, 2016.

  
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John R. Froeschner  
United States Magistrate Judge